IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE PIUS C.KURIAKOSE

TUESDAY, THE 7TH AUGUST 2007 / 16TH SRAVANA 1929

WP(C).No. 19094 of 2005(W)

AGAINST THE ORDER DATED 10/03/05 IN IA.120/05 IN OS.116/2003 of MUNSIFF'S COURT, CHITTUR

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PETITIONER:

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1. PAZHANIYAMMAL, W/O.VENKITACHALA KONAR, OTTANCHALLA, MUTHALAMADA VILLAGE, CHITTUR TALUK, PALAKKAD DT.

2. RADHAKRISHNAN, S/O.VENKITACHALA KONAR, OTTANCHALLA, MUTHALAMADA VILLAGE, CHITTUR TALUK, PALAKKAD DT.

BY ADV. SRI.P.R.VENKETESH
SMT.ASHA CHACKO

RESPONDENTS:

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1. SIVANATHA SWAMY, S/O.CHINNA MARIMUTHU GOUNDER, OTTANCHALLA, MUTHALAMADA VILLAGE, CHITTUR TALUK, PALAKKAD DT.

2. ASSISTANT EXECUTIVE ENGINEER, ELECTRICAL SUB DIVISION, K.S.E.B., KOLLENGODE, PALAKKAD DT.

3. SARASWATHY D/O.VENKITACHALA KONAR, OTTANCHALLA, MUTHALAMADA VILLAGE, CHITTUR TALUK, PALAKKAD DT.

4. RAJATHY D/O.VENKITACHALA KONAR, OTTANCHALLA, MUTHALAMADA VILLAGE, CHITTUR TALUK, PALAKKAD DT.

5. DORAISWAMY, S/O.VENKITACHALA KONAR, OTTANCHALLA, MUTHALAMADA VILLAGE, CHITTUR TALUK, PALAKKAD DT.

6. NAYAKAM W/O.NAGARAJ,
OTTANCHALLA, MUTHALAMADA VILLAGE,
CHITTUR TALUK, PALAKKAD DT.

7. THILAKAVATHY, W/O.RADHAKRISHNAN,
OTTANCHALLA, MUTHALAMADA VILLAGE,
CHITTUR TALUK, PALAKKAD DT.

R3 TO R7 BY ADV. SMT.G.SUMA
R2 BY ADV.SRI.JOSE J.MATHEIKEL, SC, KSEB
R1 BY ADV. SRI.V.CHITAMBARESH
SRI.T.C.SURESH MENON

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 07/08/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WPC.19094/05

APPENDIX

PETITIONER'S EXTS:

EXT.P1 – TRUE COPY OF REPORT AND PLAN DT.1.10.04 SUBMITTED BY COMMR.

EXT.P2 – TRUE COPY OF ADDL. WRITTEN STATEMENT DT.16.11.04 SUBMITTED BY 1ST DEFENDANT-1ST PETR.

EXT.P3 – TRUE COPY OF I.A.120/05 DT.10.1.05 FILED BY 1ST PETR. BEFORE MUNSIFF, CHITTUR.

EXT.P4 – TRUE COPY OF ORDER DT.10.3.05 IN I.A.120/05 IN O.S.116/03 PASSED BY MUNSIFF, CHITTUR.

/TRUE COPY/

PIUS C. KURIAKOSE, J.

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W.P.(C)No.19094 OF 2005

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DATED THIS THE 7th AUGUST, 2007

J U D G M E N T

In a suit for injunction, defendants filed an application for issuance of a commission for identifying the suit property. The learned Munsiff by Ext.P4 order dismissed that application saying that the burden is on the plaintiff to identify the suit property and to show that he is in possession of the property.

2. Heard both sides.

3. Mr.P.R.Venkatesh, counsel for the petitioners submits that the petitioners have an alternative case of title by adverse possession and limitation and that in the written statement filed by the petitioners, a portion of their property has been shown in a separate schedule and the request in the commission application was that the said property be identified so that the court will know as to which is the property in respect of which the plea of adverse possession is set up. According to the learned counsel, it is necessary that the defendants' property also be identified clearly for which a commissioner's report is essential.

4. I do not find any infirmity about Ext.P4 warranting correction by this Court under the supervisory jurisdiction. I refuse to interfere

with Ext.P4. However, I make it clear that after the entire evidence has come on record, the court below will hear the parties on the question as to whether the commission as sought for by the defendants in the present petition is necessary and give a decision on that question. Thereafter only the judgment in the suit will be delivered. Confirmation of Ext.P4 by this Court will not stand in the way of the court below issuing commission sought for by the petitioners at that stage, if the court becomes convinced about the necessity of such a commission report.

The Writ Petition is disposed of as above.

(PIUS C.KURIAKOSE, JUDGE)

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